



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DISSENTING OPINION IN ADVISORY OPINION 1981-16

of

CHAIRMAN JOHN W. McGARRY

I dissent from the Commission's conclusion in Advisory Opinion 1981-16. In that opinion, the Commission has taken an overly restrictive approach to amounts received after the general election to defray costs incurred in connection with Commission compliance or audit actions by the committee of a publicly funded presidential candidate.

The Federal Election Campaign Act of 1971, as amended, currently contains an exemption for legal and accounting services. Under that exemption, legal and accounting services rendered to a candidate are not treated as contributions: 1) if the person paying for the services is the regular employer of the individual rendering the services; and 2) if the services are solely for the purpose of complying with the Act or with the public financing provisions. 2 U.S.C. 431(S)(b)(ix).

I see no reason why there could not be a very limited extension of this exemption. In this situation, all elections are over. All the campaign desires is to collect money for the limited purpose of defraying costs incurred in connection with Commission compliance or audit actions and costs incurred for litigation in connection with commercial disputes.

The Commission is willing to view amounts received to defray the costs of litigation relating to commercial disputes arising out of the campaign as exempt from the definition of contribution. Yet, the Commission refuses to view as exempt amounts received to defray costs incurred in connection with Commission compliance or audit actions. There is no basis for this distinction. If donations to defray the costs of litigation relating to commercial disputes arising out of the campaign are not treated as contributions, then it necessarily follows that donations received to defray costs incurred in connection with Commission compliance or audit actions are not contributions.

Under the legal and accounting services exemption, a candidate may receive unlimited services to ensure compliance with the Act or the public financing provisions. It is consistent with the underlying purposes of the legal and accounting services exemption to permit a candidate to receive unlimited amounts of money after the election

to defray costs incurred in connection with Commission compliance or audit actions. 1/ Amounts received to defray such costs are clearly distinguishable from contributions received to engage in political activity. See AO 1980-4. I therefore view amounts received by a candidate after an election for the limited purpose of defraying costs incurred in connection with Commission compliance or audit actions, as well as defraying costs incurred for litigation relating to commercial disputes, as exempt from the definition of contribution. Such donations could in no way influence a federal election and therefore should not be treated as contributions. However, consistent with the current requirements in the law for exempt legal and accounting services, I would require the reporting of all such donations.

1/ The Commission has seen fit to extend the legal and accounting service exemption to permit major party presidential candidates who receive full public funding of their general election campaigns to receive contributions to a legal and accounting compliance fund. Inasmuch as these contributions are received during the candidate's campaign rather than after the campaign, the Commission has correctly treated them as contributions subject to the limitations, prohibitions and reporting requirements of the Act. See 11 CFR 9003.2 and 9003.3. In addition, expenditures for legal and accounting compliance services by presidential candidate receiving either primary matching funds or general election public funding do not count against the candidate's expenditure limitations. 11 CFR 100.8(b)(15).